IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1463 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GORDHANBHAI CHHOTABHAI PATEL

Versus

MADHUSUDAN RATANLAL SHAH

Appearance:

1. Criminal Misc.Application No. 1463 of 1999

MR MC SHAH for applicant

NOTICE SERVED for opponent No. 1

MS NANDINI JOSHI APP for opponent No. 2

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 08/08/2003

ORAL JUDGEMENT

1. By filing this application under Section 482 of

the Code of Criminal Procedure, the applicant who is a practicing advocate at Vadodara District Court has prayed to expunge the remarks made against him by the learned Additional Sessions Judge, Vadodara in paragraphs 4 and 7 of the judgment dated 6.10.1998 rendered in Criminal Revision Application No.148 of 1998.

2. The opponent No.1 had filed a criminal complaint bearing Criminal Case No.214 of 1982 before the learned Judicial Magistrate, First Class, Vadodara, for the commission of the alleged offences under the Gujarat Ownership Flats Act, against Satishbhai Narsibhai Patel. In the said proceedings, the applicant herein appeared as advocate for the accused Satishbhai Narsibhai Patel. The learned JMFC, Second Court, Vadodara framed charge against the original accused Satishbhai Narsibhai Patel, on 4.5.1998, for the commission of offences under Sections 5 and 42 of the Gujarat Ownership Flats Act. The said charge was framed in the absence of the original accused as he had obtained exemption from the concerned Court for his personal appearance in the court. It appears from the record that the original accused Satishbhai had died on 3.11.1997, that is, prior to the framing of the charge against him. It is the say of the applicant that since the original accused was granted exemption from personal appearance in Court, the applicant did not know that the accused Satishbhai had died when the charge was framed against him on 4.5.1998. It is the case of the applicant that on coming to know about the death of the original accused, he immediately filed a pursis in the month of May 1998 itself before the concerned learned Magistrate declaring that the accused had died before the framing of the charge against him. It appears from the record that thereafter the first opponent had given an application to join Timirkant Satishbhai Patel and Girishbhai Satishbhai Patel, who are sons of the deceased original accused Satishbhai Narsibhai Patel, to implead them as accused on the ground that they were partners with the original accused Satishbhai Narsibhai Patel. It appears from the record of the case that the said application filed at Ex.93 by the original complainant, that is, opponent No.1 herein came to be dismissed by the learned Magistrate on 22.1.1999. However, one of the sons of Satishbhai Narsibhai Patel i.e., Timirkant Satishbhai Patel filed Criminal Revision Application No. 148 of 1998 in the Court of the Sessions Judge, Vadodara and in the said proceeding also the applicant appeared as an advocate for the revision petitioner - Timirkant Satishbhai Patel. After hearing the parties, the learned Additional Sessions Judge, Vadodara has passed the order allowing

the revision in part. In the said proceedings, the learned Additional Sessions Judge has passed remarks in paragraphs 4 and 7 against the present applicant. It would be relevant to refer to the said remarks which are quoted hereunder for considering the prayer made in the petition:

"4. It was the duty of the learned Advocate to convey to the trial Court that the accused has passed away. The said fact was never brought to the notice of the learned trial Judge, which shows that the learned Advocate was sheerly negligent in not bringing this fact to the notice of the trial Court."

"7. Looking to the judgment and the powers conferred on this Court in revision, I do not think that the order of the trial Court directing framing of charges is perverse. However, it will have to be noted that the proceedings would not abate as per the submissions of learned Advocate Mr. G.C. Patel as he himself wants to continue with the litigation, wherein the present petitioner has been sought to joined as a party as an accused."

It is these remarks made by the learned Additional Sessions Judge against the present applicant that have given rise to the present application.

3. Mr. M.C. Shah, learned advocate for the applicant, has submitted that the applicant is a Senior Advocate practicing nearly 45 years in Vadodara District Court. Since the learned Magistrate had granted exemption in favour of the deceased original accused from his personal appearance in the Court, the charge was framed in his absence. He submitted that when the charge was framed in the absence of the original accused as he was granted exemption from his personal appearance in Court, the applicant did not know about the death of the original complainant Satishbhai. But on coming to know about the death of the original accused, the applicant herein had immediately brought the said fact to the notice of the learned Magistrate by filing a pursis. He submitted that there was absolutely no reason for the learned Additional Sessions Judge to pass such remarks against the applicant as made in paras 4 and 7 of the judgment rendered in Criminal Revision Application No.148 of 1998. He also emphasized that those remarks were made without hearing the applicant. It is therefore prayed that the said remarks may be expunged by allowing the

application.

4. Ms. Nandini Joshi, learned APP appeared on behalf of opponent No.2 and submitted that appropriate orders, considering the fact situation of the case, may be passed.

5. I have considered the submissions advanced by the learned advocates appearing or the parties. I have also perused the averments made in the application and the impugned remarks made in paragraphs 4 and 7 of the judgment dated 6.10.1998 recorded by the learned Additional Sessions Judge in Criminal Revision Application No.148 of 1998.

6. Considering the fact situation, it appears that the learned Magistrate had framed the charge on 4.5.1998 in the absence of the original accused Satishbhai as he was granted exemption from personal appearance in court. Therefore, when the charge was framed against him he was not present and the applicant who was the advocate appearing on his behalf in that case before the Magistrate was not knowing about the death of the original accused who died on 3.11.1997. Therefore, the charge was framed against a dead person. But when the applicant herein came to know about the death of original accused Satishbhai, he immediately brought the said fact to the notice of the concerned Magistrate in the same month itself by filing a pursis stating that the original accused had died on 3.11.1997 and that the charge was framed against a dead person. In the aforesaid view of the matter, I am of the opinion that the applicant was not at all negligent as he had brought the fact of death of the original accused Satishbhai to the notice of the concerned Magistrate immediately in the same month, that is, in May 1998 itself. In that view of the matter, the remarks made by the learned Additional Sessions Judge, Vadodara in paras 4 and 7 of the judgment rendered in Criminal Revision Application No.148 of 1998 against the applicant herein, are unwarranted and deserve to be expunged by allowing this application.

7. For the foregoing reasons, the application succeeds and accordingly it is allowed. The prayer for expunging remarks made against the applicant in paragraphs 4 and 7 of the judgment rendered by the learned Additional Sessions Judge, Vadodara in Criminal Revision Application No.148 of 1998 on 6.10.1998 is granted and accordingly the said remarks stand expunged. Rule is made absolute.

(A.M. Kapadia, J.)

(karan)